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8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA

10 JASON A. SMITH,
11 Plaintiff,
12 v.
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14 A. TAMAYO, et al.,
15 Defendants.

16 Case No. 19-01600 BLF (PR)

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18 **ORDER OF DISMISSAL**

19 Plaintiff, a state prisoner at the Correctional Training Facility in Soledad (“CTF”),
20 filed the instant *pro se* civil rights action pursuant to 42 U.S.C. § 1983, against CTF prison
21 officials. Plaintiff’s motion for leave to proceed *in forma pauperis* will be granted in a
separate order.

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23 **DISCUSSION**

24 **A. Standard of Review**

25 A federal court must conduct a preliminary screening in any case in which a
26 prisoner seeks redress from a governmental entity or officer or employee of a
27 governmental entity. *See* 28 U.S.C. § 1915A(a). In its review, the court must identify any
28 cognizable claims and dismiss any claims that are frivolous, malicious, fail to state a claim

1 upon which relief may be granted or seek monetary relief from a defendant who is immune
2 from such relief. *See id.* § 1915A(b)(1),(2). Pro se pleadings must, however, be liberally
3 construed. *See Balistreri v. Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th Cir. 1988).

4 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential
5 elements: (1) that a right secured by the Constitution or laws of the United States was
6 violated, and (2) that the alleged violation was committed by a person acting under the
7 color of state law. *See West v. Atkins*, 487 U.S. 42, 48 (1988).

8 **B. Plaintiff’s Claims**

9 Plaintiff seeks redress for the violation of his First Amendment right to the free
10 exercise of his religion, among other claims, for the denial of a Kosher diet as part of the
11 practice of his Rastafarian religion. (Compl., Attach. at 3-7.) Plaintiff names A. Tamayo,
12 Y. Friedman, M. Atchley, and M. Voong as defendants. (Compl. at 2.)

13 Plaintiff has filed a previous action against the same Defendants under *Smith v.*
14 *Tamayo, et al.*, Case No. 19-00537 BLF (PR), which is currently pending in this Court. In
15 that case, Plaintiff filed a complaint which is identical to the complaint filed in this action.
16 *Smith v. Tamayo, et al.*, Case No. 19-00537 BLF (PR), (Docket No. 1).

17 Duplicative or repetitious litigation of virtually identical causes of action is subject
18 to dismissal under 28 U.S.C. § 1915 as malicious. *Bailey v. Johnson*, 846 F.2d 1019, 1021
19 (5th Cir. 1988). An *in forma pauperis* complaint that merely repeats pending or previously
20 litigated claims may be considered abusive and dismissed under § 1915. *Cato v. United*
21 *States*, 70 F.3d 1103, 1105 n.2 (9th Cir. 1995); *Bailey*, 846 F.2d at 1021.

22 Plaintiff is seeking leave to proceed *in forma pauperis*, as he did in the previous
23 action discussed above. This is now Plaintiff’s second *in forma pauperis* action filed
24 against the same Defendants in which he repeats the same claims. It is therefore subject to
25 dismissal under § 1915 as abusive. *See Cato*, 70 F.3d at 1105 n.2; *Bailey*, 846 F.2d at
26 1021.

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CONCLUSION

For the foregoing reasons, the complaint is DISMISSED as duplicative and abusive.

See 28 U.S.C. § 1915.

IT IS SO ORDERED.

Dated: June 12, 2019

Benjamin Freeman

BETH LABSON FREEMAN

United States District Judge

Order of Dismissal
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